

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAVIER AVALOS

Petitioner,

vs.

JOHN MARSHALL, Warden,

Respondent.

CASE NO. CV 11-7671 JHN (RZ)

ORDER SUMMARILY DISMISSING  
PAROLE HABEAS ACTION  
PURSUANT TO *SWARTHOUT V.*  
*COOKE*

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides in part that “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified.” Because a recent Supreme Court ruling plainly forecloses Petitioner’s habeas challenge to his ongoing denial of parole, the Court will dismiss the action summarily.

**I.**

**BACKGROUND**

Petitioner Javier Avalos is serving a lengthy prison sentence following his 1986 conviction of murder. On September 9, 2009, the Board of Parole Hearings denied Petitioner parole. *See* Ex. B to Pet. (hearing transcript). In 2010 and 2011, Petitioner

1 exhausted a state-habeas challenge to the denial. He now seeks habeas relief from this  
 2 Court, asserting, in essence, that the Board made a decision so substantively incorrect that  
 3 it violated his federal Due Process rights. A new Supreme Court case forecloses relief.

## 4 5 **II.**

### 6 **FEDERAL DUE PROCESS CONCERNS**

### 7 **ARE VERY LIMITED IN PAROLE CASES**

8 The Supreme Court recently decided *Swarthout v. Cooke*, 562 U.S. \_\_\_, 131  
 9 S. Ct. 859, 178 L. Ed. 2d 732 (2011) (*Cooke*). *Cooke* reversed two rulings by the Ninth  
 10 Circuit granting habeas relief based on a lack of “some evidence” of the inmates’ current  
 11 dangerousness. *Cooke* said that such a “some evidence” requirement is a state, not federal,  
 12 requirement and held that “the responsibility for assuring that the constitutionally adequate  
 13 procedures governing California’s parole system are properly applied rests with California  
 14 courts, and is no part of the Ninth Circuit’s business.” The federal habeas court’s inquiry  
 15 – in cases, such as this one, in which a prisoner seeks habeas relief based on an alleged  
 16 violation of the federal Due Process Clause – is limited to determining whether the prisoner  
 17 “was allowed an opportunity to be heard and was provided a statement of the reasons why  
 18 parole was denied.” *Id.*, citing *Greenholtz v. Inmates of Neb. Penal and Correctional*  
 19 *Complex*, 442 U.S. 1, 16, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979).

20 Here, Petitioner was present at his September 9, 2009 parole hearing, was  
 21 given an opportunity to be heard, and was provided a statement of reasons for the denial  
 22 of parole. *See* Ex B to Pet. “The Constitution does not require more [process].”  
 23 *Greenholtz*, 442 U.S. at 16. In light of *Cooke*, Petitioner presents no cognizable claim for  
 24 relief based on federal law.

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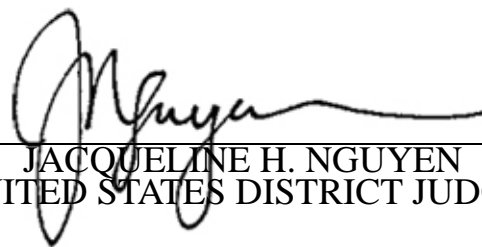
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**III.**

**CONCLUSION**

For the foregoing reasons, the Court DISMISSES the action with prejudice.

DATED: October 7, 2011

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JACQUELINE H. NGUYEN  
UNITED STATES DISTRICT JUDGE